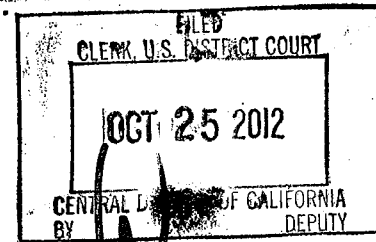


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8 Attorneys for Defendant REV NEW MEDIA, INC.

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 NATIONAL PHOTO GROUP, LLC, a
limited liability company,

12 Plaintiff,

13 vs.

14 REV NEW MEDIA, INC., and DOES 1-
15 10, inclusive,

16 Defendants.

CASE NO. CV12-04596 R (MANx)

~~PROPOSED~~ PROTECTIVE ORDER

STIPULATION FOR PROTECTIVE
ORDER FILED CONCURRENTLY
HEREWITH

Complaint Filed: May 25, 2012
Judge: Hon. Manuel L. Real

18 Pursuant to Fed. R. CIV. Proc. 26 (c)(1), C.D. Cal. Local Rule 79-5, and the
19 Stipulation for Protective Order (hereinafter the "Stipulated Protective Order") entered into
20 by Plaintiff National Photo Group, LLC ("NPG") and Defendant Rev New Media, Inc.
21 ("RNM") (RNM and NPR shall hereinafter be collectively referred to as the "Parties"), the
22 Court issues the following order:
23

24 **DEFINITIONS**

- 25 1. The term "Confidential Information" shall mean any materials properly
26 designated as "CONFIDENTIAL" OR "CONFIDENTIAL—ATTORNEYS
27 EYES ONLY" under Paragraph 8 of this Stipulated Protective Order.
28

- 1 2. The term "materials" shall have the broadest interpretation as to encompass
2 anything and everything produced and/or disclosed in accordance with this
3 Stipulated Protective Order and shall include, but shall not be limited to:
4 documents; correspondence; personal contact information or passwords;
5 memoranda; bulletins; blueprints; specifications; customer lists or other material
6 that identify customers or potential customers; price lists or schedules or other
7 matter identifying pricing; minutes; telegrams; letters; statements; cancelled
8 checks; contracts; invoices; drafts; books of account; worksheets; notes of
9 conversations; desk diaries; appointment books; expense accounts; recordings;
10 photographs; motion pictures; compilations from which information can be
11 obtained and translated into reasonably usable form through detection devices,
12 sketches; drawings; notes; reports; instructions; disclosures; other writings;
13 models and prototypes and other physical objects.
14 3. The term "Counsel" shall mean outside counsel of record, and other attorneys,
15 paralegals, secretaries, and designated contract attorneys and other support staff
16 employed by the law firm identified below.
17 4. The term "Party" shall mean, in the plural as well as the singular, any named
18 plaintiff or defendant in this action, and shall include any present directors,
19 officers, or employees of any Party.
20 5. The term "producing party" shall mean a Party or non-party that produces
21 materials in the course of this litigation.
22 6. The term "designating party" shall mean a Party or non-party that designates
23 materials that it produces in disclosures or in discovery as "Confidential."
24 7. The term "receiving party" shall mean a Party that receives materials from a
25 producing party in the course of this litigation.

GENERAL RULES

- 26 8. Subject to Paragraph 26, each Party or non-party to this litigation that produces
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1 or discloses any materials, answers to interrogatories, responses to requests for
2 admission, trial testimony, deposition testimony, and transcripts of trial
3 testimony and depositions, or information that the producing party believes
4 should be subject to the Stipulated Protective Order may designate the same as
5 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY."

6 The designating party must exercise restraint, designating only those portions of
7 the materials that warrant protection. The designating party must promptly
8 withdraw any mistaken designation.

- 9
- 10 a. Designation as "CONFIDENTIAL": Any Party or non-party to this litigation
11 may designate information as "CONFIDENTIAL" if the Party or non-party
12 believes, in good faith, that the materials contain proprietary information,
13 confidential business or financial information, information that may for any
14 business or competitive purposes need to be protected from disclosure, terms
15 of confidential agreements between a Party and a non-party, trade secrets as
16 defined by California Civil Code §3426.1, and/or information in which the
17 Party or a non-party has a privacy interest protected by applicable law.
- 18 b. Designation as "CONFIDENTIAL – ATTORNEYS EYES ONLY": Any
19 Party or non-party to this litigation may designate information as
20 "CONFIDENTIAL – ATTORNEYS EYES ONLY" if the Party or non-party
21 believes, in good faith, that the materials contain proprietary information,
22 confidential business or financial information, information that may for any
23 business or competitive purposes need to be protected from disclosure, term
24 of confidential agreements between a Party and a non-party, trade secrets as
25 defined by California Civil Code §3426.1, and/or information in which the
26 Party or a non-party has a privacy interest or protected by applicable law,
27 and that such materials should be protected from disclosure to other Parties,
28 and should be strictly viewable only by Counsel or others described in

1 paragraph 13 for the purposes of this litigation.

2
3 9. In the event a Party or non-party produces documents in response to a request
4 for production of documents, the producing party may designate documents
5 (including any portions thereof and any information contained therein) as
6 Confidential and shall stamp, mark, or place a physical and/or electronic label
7 on those documents stating "CONFIDENTIAL" or "CONFIDENTIAL –
8 ATTORNEYS EYES ONLY."

9
10 10. Whenever a deposition taken on behalf of any Party involves a disclosure of
11 Confidential Information of any Party or non-party:

- 12 a. said deposition or portions thereof shall be designated as containing
13 Confidential Information subject to the provisions of the Stipulated
14 Protective Order; such designation shall be made on the record wherever
15 possible, but a party may designate portions of depositions as containing
16 Confidential Information after transcription of the proceedings; a Party shall
17 have until fifteen (15) days after receipt of the deposition transcript to inform
18 the other Party or Parties to the action of the portions of the transcript
19 designated "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS
20 EYES ONLY;"
- 21 b. the disclosing Party or non-party shall have the right to exclude from
22 attendance at said deposition, during such time as the Confidential
23 Information is to be disclosed, any person other than the deponent, counsel
24 (including their staff and associates), the court reporter, and the person(s)
25 agreed upon pursuant to paragraph 12 below; and
- 26 c. the originals of said deposition transcripts and all copies thereof shall bear
27 the legend "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS
28 EYES ONLY" as appropriate, and the original or any copy ultimately
presented to a court for filing shall not be filed unless the party seeking to

1 file it seeks permission to file it under seal and identifying it as being subject
2 to the Stipulated Protective Order. Nothing in this Stipulated Protective
3 Order shall prevent a party from presenting any portion of any deposition
4 transcript not designated "CONFIDENTIAL" or "CONFIDENTIAL—
5 ATTORNEYS EYES ONLY" by any means.

- 6 11. All Confidential Information designated as "CONFIDENTIAL" or
7 "CONFIDENTIAL – ATTORNEYS EYES ONLY" shall not be disclosed by
8 the receiving party to anyone other than those persons designated herein and
9 shall be handled in the manner set forth below and, in any event, shall not be
10 used for any purpose other than in connection with this litigation, unless and
11 until such designation is removed either by agreement of the parties, or by order
12 of the Court.
- 13 12. Information designated "CONFIDENTIAL" shall be disclosed only to (a) the
14 Court and its employees, (b) and Party, or any officer, director, or employee of a
15 party to the extent deemed reasonably necessary by counsel to aid in the
16 prosecution, defense, or settlement of this action; (c) Counsel of record and
17 designated contract attorneys employed by counsel of record, any Party's in-
18 house counsel assigned to participate in or supervise this case, and support
19 personnel of such counsel of record or in-house counsel of the sort described in
20 paragraph 3 of the Stipulated Protective Order; (d) experts and/or consultants
21 (together with their clerical staff) retained by Counsel of record on behalf of the
22 Parties, who have signed the "Acknowledgment and Agreement to Be Bound by
23 the Stipulated Protective Order"; (e) mediators and/or discovery referees
24 selected by Counsel of record on behalf of the parties or appointed by the Court
25 in this action; (f) court reporter(s) employed in this action; (g) litigation support
26 services, including outside copying services, court reporters, stenographers or
27 companies engaged in the business of supporting computerized or electronic
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1 discovery or trial preparation employed in this action; (h) witnesses at any
2 deposition to the extent deemed in good faith reasonably necessary by Counsel
3 to aid in the prosecution, defense, or settlement of this action, who have signed
4 the "Acknowledgment and Agreement to Be Bound by the Stipulated Protective
5 Order"; and (i) any other person to whom the Parties agree in writing or on the
6 record to disclose such information. Nothing in this Stipulated Protective Order
7 prevents a designating party from disclosing "CONFIDENTIAL" information
8 designated solely by it as such to any person.

- 9 13. Information designated "CONFIDENTIAL – ATTORNEYS EYES ONLY"
10 shall be disclosed only to (a) the Court and its employees, (b) counsel of record
11 and designated contract attorneys employed by Counsel of record, and personnel
12 of such Counsel of record of the sort set forth in paragraph 3 of the Stipulated
13 Protective Order; (c) experts and/or consultants (together with their clerical
14 staff) retained by counsel of record on behalf of the Parties, who have signed the
15 "Acknowledgment and Agreement to Be Bound by the Stipulated Protective
16 Order"; (d) mediators and/or discovery referees selected by counsel of record on
17 behalf of the parties or appointed by the Court in this action; (e) court reporter(s)
18 employed in this action; (f) litigation support services including outside copying
19 services, court reporters, stenographers or companies engaged in the business of
20 supporting computerized or electronic discovery or trial preparation employed in
21 this action; (g) witnesses at any deposition to the extent deemed in good faith
22 reasonably necessary by Counsel to aid in the prosecution, defense, or
23 settlement of this action, who have signed the "Acknowledgment and
24 Agreement to Be Bound by the Stipulated Protective Order"; and (h) any other
25 persons to whom the Parties agree in writing or on the record to disclose such
26 information. Nothing in this Stipulated Protective Order prevents a designating
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1 party from disclosing "CONFIDENTIAL—ATTORNEYS EYES ONLY"
2 information designated solely by it as such to any person.

3 14. As long as Counsel has explained the contents of the "Acknowledgment and
4 Agreement to Be Bound by the Stipulated Protective Order" to any third party
5 and obtained the signature of the third party, no Counsel shall be responsible for
6 any disclosures, inadvertent or otherwise, made by the third party of any
7 Confidential Information.

8 15. With respect to material designated "CONFIDENTIAL" or "CONFIDENTIAL
9 – ATTORNEYS EYES ONLY," any person indicated on the face of the
10 document to be its originator, author or a recipient of a copy thereof, may be
11 shown the name.

12 16. All materials designated "CONFIDENTIAL" or "CONFIDENTIAL –
13 ATTORNEYS EYES ONLY" in accordance with the terms of this Stipulated
14 Protective Order that is filed with the Court, and any pleadings, motions, or
15 other papers containing material designated "Confidential," shall be filed in
16 accordance with the procedures set forth in Central District of California Local
17 Rule 79-5 and directed to the judge to whom the papers are directed. Any party
18 seeking to file any material designated "CONFIDENTIAL" or
19 "CONFIDENTIAL – ATTORNEYS EYES ONLY" must apply for permission
20 from the Court to file such material under seal and set forth with particularity in
21 the application the reason for seeking such permission. The Parties understand
22 that the Parties' stipulation or the mere designation of materials as
23 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY" is
24 not sufficient to require the Court to allow filing under seal. If the Court finds
25 that the material is not qualified for filing under seal, the Court may direct the
26 material to be filed publicly, issue an order to show cause why the material
27 should not be filed publicly, or issue such other order as is just. For motions, the
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1 parties should also file a redacted version of the motion and supporting papers to
2 the extent applicable.

3 17. At any stage of these proceedings, any Party may object to a designation of the
4 materials as Confidential Information. Such objections will be resolved under
5 the procedures of Local Rules 37-1 and 37-2. The materials at issue shall be
6 treated as Confidential Information, as designated by the designating party, until
7 the Court has ruled on the objection or the matter has been otherwise resolved.

8 18. All Confidential Information shall be held in confidence by those inspecting or
9 receiving it, and shall be used only for purposes of this action. Counsel for each
10 Party and each person receiving Confidential Information shall take reasonable
11 precautions to prevent the unauthorized or inadvertent disclosure of such
12 information. If Confidential Information is disclosed to any person other than a
13 person authorized the Stipulated Protective Order, the Party responsible for the
14 unauthorized disclosure shall immediately bring all pertinent facts relating to the
15 unauthorized disclosure to the attention of the other Parties and, without
16 prejudice to any rights and remedies of the other Parties, take all reasonable
17 steps to prevent further disclosure by the party and by the person(s) receiving
18 the unauthorized disclosure.

19 19. No Party shall be responsible to another Party for disclosure of Confidential
20 Information under the Stipulated Protective Order if the information in question
21 is not labeled or otherwise identified as such in accordance with the Stipulated
22 Protective Order.

23 20. If a Party or non-party, through inadvertence, produces any Confidential
24 Information without labeling or marking or otherwise designating it as such in
25 accordance with the Stipulated Protective Order, the designating party may give
26 written notice to the receiving party that the document or thing produced is
27 deemed Confidential Information, and that the document or thing produced
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1 should be treated as such in accordance with that designation under the
2 Stipulated Protective Order. The receiving party shall treat the materials as
3 confidential, once the designating party so notifies the receiving party. If the
4 receiving party has disclosed the materials before receiving the designation, the
5 receiving party must notify the designating party in writing of each such
6 disclosure. Counsel for the Parties shall agree on a mutually acceptable manner
7 of labeling or marking inadvertently produced materials as "CONFIDENTIAL"
8 or "CONFIDENTIAL – ATTORNEYS EYES ONLY."

9 21. Nothing herein shall prejudice the right of any Party or non-party to object to the
10 production of any discovery material on the grounds that the document is
11 protected as privileged or as attorney work product.

12 22. Nothing herein shall bar counsel from rendering advice to their clients with
13 respect to this litigation and, in the course thereof, relying upon any information
14 designated as Confidential Information, provided that the contents or the
15 information shall not be disclosed in contravention of this Stipulated Protective
16 Order.

17 23. The Stipulated Protective Order shall be without prejudice to the right of a Party
18 or non-party to oppose production of any information for lack of relevance or
19 any other ground other than the mere presence of Confidential Information. The
20 existence of the Stipulated Protective Order shall not be used by either party as a
21 basis for discovery that is otherwise improper under the Federal Rules of Civil
22 Procedure.

23 24. If any Party has obtained Confidential Information in accordance with this
24 Stipulated Protective Order and receives a request to produce such Confidential
25 Information by subpoena or other compulsory process commanding the
26 production of such Confidential Information, such Party shall promptly notify
27 the producing and/or designating party, including in such notice the date set for
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1 the production of such subpoenaed information and, unless prohibited by
2 applicable law, enclosing a copy of the subpoena (or other form of process).
3 Notwithstanding the foregoing, nothing herein shall be construed to prevent
4 disclosure of Confidential Information if such disclosure is required by law,
5 lawful subpoena, or by order of the Court.

6 25. Upon final termination of this action, including any and all appeals, counsel for
7 each Party shall, upon request of the producing party, return the Confidential
8 Information to the Party or non-Party that produced the information, including
9 any copies, excerpts, and summaries thereof, or shall destroy same at the option
10 of the receiving party, and shall purge all such information from all media on
11 which it resides. Notwithstanding the foregoing, counsel for each party may
12 retain all pleadings, briefs memoranda, motions, and other documents filed with
13 the Court that refer to or incorporate Confidential Information, and will continue
14 to be bound by the Stipulated Protective Order with respect to all such retained
15 information. Further, attorney work product materials that contain Confidential
16 Information need not be destroyed, but, if they are not destroyed, the person in
17 possession of the attorney work product will continue to be bound by the
18 Stipulated Protective Order with respect to all such retained information.

19 26. The restrictions and obligations set forth herein shall not apply to any
20 information that: (a) the Parties agree should not be designated Confidential
21 Information; (b) is already, or without violation of this Stipulated Protective
22 Order enters, the public domain; or (c) has come or shall come into the receiving
23 party's legitimate knowledge independently of the production by the designating
24 party.

25 27. The restrictions and obligations herein shall not be deemed to prohibit
26 discussions of any Confidential Information with anyone if that person already
27 has or obtains legitimate possession thereof.
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1 28. Transmission by facsimile and/or by email to the addresses set forth on the
2 signature block of the Stipulated Protective Order, or to other addresses as may
3 be agreed by the parties in writing, with a subject heading referring to this action,
4 and to this Stipulated Protective Order, is acceptable for all notification purposes
5 herein.

6 29. Inadvertent Production of Privileged or Protected Documents: If information
7 subject to a claim of attorney-client privilege or work product protection is
8 inadvertently produced, such production shall in now way prejudice or
9 otherwise constitute a waiver of, or estoppel as to, any claim of privilege or
10 work-product protection for such information. If a party has inadvertently
11 produced information subject to a claim of privilege or protection, upon written
12 request made by the producing party of such inadvertent production, the
13 information for which a claim of inadvertent production is made, including all
14 copies, shall be returned within seven (7) court days of such request unless the
15 receiving party intends to challenge the producing party's assertion of privilege
16 or protection. All copies of inadvertently produced documents shall be
17 destroyed, and any document or material information reflecting the contents of
18 the inadvertently produced information shall be expunged. If a receiving party
19 objects to the return of such information within the seven (7) court day period
20 described above, the producing party may move the Court for an order
21 compelling the return of such information. Pending the ruling, a receiving party
22 may retain the inadvertently produced documents in a sealed envelope and shall
23 not make any use of such information.

24 30. Any violation of this Stipulated Protective Order may constitute a contempt of
25 Court, and be punishable as such, and may subject the offending party to such
26 additional and further remedies as may be available to the aggrieved party. The
27 Stipulated Protective Order may be modified by agreement of the Parties subject
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1 to approval by the Court.

2 31. The Parties agree to be bound by this Stipulated Protective Order pending its
3 approval by the Court.

4 32. The Court may modify the terms and conditions of this Stipulated Protective
5 Order for good cause, or in the interest of justice, or on its own order at any time
6 in these proceedings. The Parties prefer that the Court provide them with notice
7 of the Court's intent to modify the Stipulated Protective Order and the content of
8 those modifications, prior to entry of such an order.

9 33. Nothing in this Stipulated Protective Order should be construed as applying to
10 evidence presented at court proceedings and/or trial. The Parties must take up
11 such matters with the judicial officer conducting the proceeding at the
12 appropriate time pursuant to Local Rule 79-5.
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15 **IT IS SO ORDERED**

16 DATED: **Oct. 25, 2012**

17 Bv: 

18 HON. MANUEL L. REAL
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